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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,706	01/08/2004	Tomoko Takehara	58647-176	8946
7590 McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			EXAMINER NGUYEN, HUONG Q	
		ART UNIT 3736	PAPER NUMBER	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/752,706	TAKEHARA, TOMOKO
Examiner	Art Unit	
Helen Nguyen	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 February 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4-12,14,16,18,20 and 22-41 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2,4-12,14,16,18,20 and 22-41 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 08 January 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application
6) Other: _____.

DETAILED ACTION

1. This Office Action is responsive to the RCE filed 2/2/2007. Claims 1, 5, 7, 23, and 33 have been amended. Claim 3 has been cancelled. **Claims 1-2, 4-12, 14, 16, 18, 20, and 22-41** remain pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-2, 4-12, 14, 16, 18, 20, and 22-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al (US Pat No. 6402699).

4. In regards to **Claim 1**, Kodama et al disclose a female physical condition management apparatus comprising:

physical condition data acquiring means, referred to as "data input device" (41) and "electrodes" (21-22, 51-52, 55);

appearance time estimation means, referred to as "CPU" (45) (Col.6, line 56-58);
estimation accuracy determination means, referred to as "decision making unit" (Col.2, line 56-60);

display means (42) (Col.6, line 50-52);

wherein the physical condition data acquiring means acquires data about physical conditions of a female, which appear in a monthly cycle including a menstruation start date (Col.6, line 34-35);

the appearance time estimation means estimates the oncoming times of appearance of the physical conditions appearing in a monthly cycle of the female based on the acquired data about the physical conditions (Col.6, line 56-58);

and the display means displays data about the estimated times of appearance (Col.6, line 50-52) and data about the determined estimation accuracy (i.e. historical record) (Col.2, line 25-27).

5. However, Kodama et al do not expressly disclose the estimation accuracy determination means for determining the accuracy of the estimations made by the appearance time estimation means based on the number of times the menstruation date has been input. However, Kodama et al do disclose that decisions made about the physical conditions of the female are based on menstrual data inputted, such as menstruation start date, which is also stored in memory (Col.6, line 56-60; Col.7 line 13-14, 36-44; Col.8 line 14-15, 22-23). Kodama et al also disclose said estimation accuracy determination means used for a comparison between present data and historical record (Col.2, line 56-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the estimation accuracy determination means of Kodama et al such that a determination of accuracy of the estimations made by the appearance time estimation means is made, as such determination is within the scope of comparisons performed between present and historical data, and to determine such accuracy from the number of times the menstruation start date has been inputted, whose

consideration as already used by Kodama et al indicates a valuable factor to take into account, for an improved device that supplies additional information to the female as well as indicates the accuracy of information derived from such device.

6. Kodama et al also do not expressly disclose the data about the estimation accuracy displayed by the display means is a probability that the physical conditions appearing in a monthly cycle of the female actually appear at the estimated times of appearance. However, as Kodama et al already disclose the structure of the display means and the estimation accuracy determination means as explained above, it would have been obvious to one of ordinary skill in the art that the display means display such probability to enhance the device by specifically displaying to the user information in the form of probability regarding the estimation accuracy of the device, as such information is also capable of being displayed along with other information acquired by said estimation accuracy determination means (Col.2, line 25-27; Col.6, line 50-52).

7. **Claims 1-2, 4-12, 14, 16, 18, 20, and 22-41** are also rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al (US Pat No. 6402699) in view of Sterling et al (US Pat No. 6958809).

8. In the alternative, Kodama et al disclose the invention claimed as elaborated above but do not disclose the data about the estimation accuracy displayed by the display means is a probability that the physical conditions appearing in a monthly cycle of the female actually appear at the estimated times of appearance. Sterling et al disclose that a system display means displays a probability or accuracy of a value calculated by the system based on the number of

measurements made to provide useful information to the user regarding device accuracy and give the user confidence in the results, also allowing the user to terminate measurement when the user is satisfied with the device accuracy (Col.35: 45-62). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display means of Kodama et al such that said display means displays a probability indicating the accuracy of information acquired, as taught by Sterling et al, such that in combination, the data about the estimation accuracy displayed by the display means is a probability that the physical conditions appearing in a monthly cycle of the female actually appear at the estimated times of appearance, to enhance the invention by providing useful probability information regarding the estimation accuracy to positively affect the female's device use.

9. In regards to **Claim 2**, Kodama et al disclose the estimation accuracy determination means determines the accuracy of the estimations made by the appearance time estimation means based on the number of times the data about the physical conditions appearing in a monthly cycle of the female has been acquired by the physical condition data acquiring means in the past. Specifically, Kodama et al disclose making a decision by comparing present data with historical record, wherein the nature of such comparison allows for accuracy determination based upon the number of times data has been acquired in the past, as described above (Col.2, line 56-60).

10. In regard to **Claims 4-5**, Kodama et al disclose the physical condition data acquiring means as used by the female to input the data about the physical conditions appearing in a monthly cycle (Col.6, line 34-35).

11. In regard to **Claims 6-7**, Kodama et al disclose the physical condition data acquiring means measures physical data, i.e. impedance (Col.6, line 25-28) of the female and acquires the data about the physical conditions appearing in a monthly cycle of the female based on the measured physical data (Col.5, line 20-34), best seen in Figure 2.

12. In regard to **Claims 8-9**, Kodama et al disclose the physical data of the female as the basal body temperature of the female (Col.8, line 35-45).

13. In regard to **Claims 10-11**, Kodama et al disclose the physical data of the female as the bioelectric impedance of the female (Col.7, line 16-30).

14. In regard to **Claims 12, 14, 16, 18, and 20**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the start date of menstruation of the female (Col.6, line 34).

15. In regard to **Claims 22-31**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the ovulation date of the female, wherein Kodama et al disclose inputting the start and ending states of menstruation, wherein said ovulation date is directly related to the start and ending date of menstruation, thus an input of said start and ending menstruation dates constitutes an ovulation date (Col.6, line 34-35).

16. In regard to **Claims 32-41**, Kodama et al disclose the data about the physical conditions appearing in a monthly cycle of the female, which is acquired by the physical condition data acquiring means, is the number of days in the monthly cycle of the female (Col.7, line 13-14).

Response to Arguments

17. Applicant's arguments with respect to **Claims 1-2, 4-12, 14, 16, 18, 20, and 22-41** have been considered but are moot in view of the new ground(s) of rejection.

18. While the Examiner does not necessarily agree with Applicant's arguments that Kodama does not teach the display means displaying a probability that the physical conditions appearing in a monthly cycle of the female actually appear at the estimated times, the Examiner has set forth new grounds of rejection above citing at least Kodama et al and Kodama et al in combination with Sterling et al in an effort to advance prosecution of the instant application.

19. For example, the Examiner notes that said claim language does not specify any apparatus structure and thus it would be obvious to one of ordinary skill in the art that the display means of Kodama et al is capable of such display as reasoned above. Furthermore, applicant contends that displaying "accuracy" is not the same thing as displaying "probability." However, this is not found persuasive because it is noted that probability is simply one specific visual manifestation of the accuracy of the device and thus, again it would be obvious to a skilled artisan within the art that the display means of Kodama et al is capable of specifically displaying probability for the aforementioned reasons.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is 571-272-8340. The examiner can normally be reached on Monday - Friday, 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HQN
2/23/2007

